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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/894,244	06/27/2001	Peng Li	12583.2USC1	5651

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EXAMINER

MILLER, CRAIG S

ART UNIT PAPER NUMBER

2857

DATE MAILED: 05/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/884,244

Applicant(s)

Li et al.

Examiner

Craig Shaw Miller

Group Art Unit

2857

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☒ Responsive to communication(s) filed on 27 June 2001
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-17 is/are pending in the application.
- ☐ Of the above claim(s) is/are withdrawn from consideration.
- ☐ Claim(s) is/are allowed.
- ☒ Claim(s) 1-17 is/are rejected.
- ☐ Claim(s) is/are objected to.
- ☐ Claim(s) are subject to restriction or election requirement.

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

1. A rejection based on double patenting of the "*same invention*" type finds its support in the language of 35 U.S.C. 101 which states that "*whoever invents or discovers any new and useful process... may obtain a patent therefore...*" (Emphasis added). Thus, the term "*same invention*," in this context, means an invention drawn to identical subject matter. Miller v. Eagle Mfg. Co., 151 U.S. 186 (1894); In re Ockert, 245 F.2d 467, 114 USPQ 330 (CCPA 1957) and In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so that they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 1-17 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-17, respectively, of prior U.S. Patent No. 6,298,315. This is a double patenting rejection.

With respect to claim 10, while the wording is not verbatim, the subject matter claimed, when viewed by one of ordinary skill in the art in light of the specification, is indeed identical.

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Bott (4,676,641) discloses measuring particle size distributions.

Lawrence *et al.* (4,831,637) discloses data receiver jitter cancellation.

Box *et al.* (4,908,784) discloses asynchronous time measurement.

Guo *et al.* (5,349,612) discloses a time delay regulator.

Guo (5,367,542) discloses data recovery with time delay control.

Guo *et al.* (5,452,333) discloses signal preconditioning.

Shields *et al.* (5,899,959) discloses characteristic measurement.

Goodenough *et al.* (5,068,788) discloses CT scan data histogram analysis.

4. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Craig Steven Miller whose telephone number is (703) 305-9730. Art Unit facsimile services are now available at (703) 308-7722.

The Examiner can normally be reached on Mondays and Thursdays from 07:30am-5:00pm EST. Should repeated attempts to reach the Examiner be unsuccessful, the Examiner's Supervisor, Marc Hoff may be reached at (703) 308-1677.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0956.

Craig Steven Miller (ss)  
26 April 2002

  
MARC S. HOFF  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800